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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

BEVERLY J. BAKER,

Plaintiff,

v.

BANK OF THE WEST,

Defendant.

Case No. 2:18-cv-10771

**COMPLAINT FOR DAMAGES**

**1. VIOLATION OF THE TELEPHONE  
CONSUMER PROTECTION ACT, 47 U.S.C.  
§227 ET SEQ.**

**2. VIOLATION OF THE ROSENTHAL FAIR  
DEBT COLLECTION PRACTICES ACT,  
CAL. CIV. CODE §1788 ET SEQ.**

**DEMAND FOR JURY TRIAL**

**COMPLAINT**

NOW comes BEVERLY J. BAKER (“Plaintiff”), by and through her attorneys, WAJDA LAW GROUP, APC (“Wajda”), complaining as to the conduct of BANK OF THE WEST (“Defendant”) as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action for damages pursuant to the Telephone Consumer Protection Act (“TCPA”) under 47 U.S.C. § 227 *et seq.* and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”) pursuant to Cal. Civ. Code §1788 *et seq.*, for Defendant’s unlawful conduct.

**JURISDICTION AND VENUE**



1       10. Thereafter, Plaintiff experienced financial hardship and began falling behind on her  
2 scheduled payments, thus incurring debt (“subject debt”).

3       11. Around the late summer of 2018, Plaintiff began receiving calls to her cellular phone, (626)  
4 XXX-4495, from Defendant.

5       12. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and  
6 operator of the cellular phone ending in 4495. Plaintiff is and always has been financially  
7 responsible for the cellular phone and its services.  
8

9       13. Defendant has primarily used the phone number (800) 653-0362 when placing calls to  
10 Plaintiff’s cellular phone. Upon belief, Defendant has used additional phone numbers as well.

11       14. Upon information and belief, the above-referenced phone number ending in 0362 is  
12 regularly utilized by Defendant during its debt collection activities.  
13

14       15. During answered calls from Defendant, Plaintiff experiences a noticeable pause, lasting a  
15 handful of seconds in length, and has to repeatedly say “hello” before a live representative begins  
16 to speak.

17       16. Upon speaking with Defendant, Plaintiff was informed that Defendant was seeking to  
18 collect upon the subject debt.

19       17. Plaintiff explained her inability to address the subject debt and informed Defendant that she  
20 was declaring bankruptcy.  
21

22       18. After explaining her inability to address the subject debt, Plaintiff asked that Defendant  
23 contact her bankruptcy attorney instead.

24       19. Defendant willfully ignored Plaintiff’s demands and continued placing phone calls to  
25 Plaintiff’s cellular phone.

26       20. When Defendant refused to contact Plaintiff’s attorney instead of her, Plaintiff demanded  
27 that it stop calling her cellular phone.  
28

1 21. Despite Plaintiff's demands, Defendant continued to relentlessly place phone calls to  
2 Plaintiff's cellular phone up until the filing of this lawsuit.

3 22. Plaintiff has received not less than 30 phone calls from Defendant since demanding that it  
4 stop contacting her.

5 23. Frustrated over Defendant's conduct, Plaintiff spoke with Wajda regarding her rights,  
6 resulting in expenses.

7 24. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

8 25. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not  
9 limited to: invasion of privacy, aggravation that accompanies collection telephone calls, emotional  
10 distress, increased risk of personal injury resulting from the distraction caused by the never-ending  
11 calls, increased usage of her telephone services, loss of cellular phone capacity, diminished cellular  
12 phone functionality, decreased battery life on her cellular phone, and diminished space for data  
13 storage on her cellular phone.  
14  
15

16 **COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

17 26. Plaintiff repeats and realleges paragraphs 1 through 25 as though fully set forth herein.

18 27. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their  
19 cellular phone using an automatic telephone dialing system ("ATDS") without their consent. The  
20 TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as "equipment which has the capacity...to  
21 store or produce telephone numbers to be called, using a random or sequential number generator;  
22 and to dial such numbers."  
23

24 28. Defendant used an ATDS in connection with its communications directed towards  
25 Plaintiff's cellular phone. During answered calls from Defendant, Plaintiff experienced a noticeable  
26 pause lasting a handful of seconds in length, and had to repeatedly say "hello" prior to being  
27 connected with a live representative, which is instructive that an ATDS was being utilized to  
28

1 generate the calls. Moreover, the nature and frequency of Defendant's contacts points to the  
2 involvement of an ATDS.

3 29. Defendant violated the TCPA by placing at least 30 phone calls to Plaintiff's cellular phone  
4 using an ATDS without her consent. Any consent Plaintiff may have given to Defendant by virtue  
5 of incurring the subject debt was explicitly revoked by her demands that it cease contacting her.  
6

7 30. The calls placed by Defendant to Plaintiff were regarding business transactions and not for  
8 emergency purposes as defined by the TCPA under 47 U.S.C. § 227(b)(1)(A)(i).

9 31. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for  
10 at least \$500.00 per call. Moreover, Defendant's willful and knowing violations of the TCPA  
11 should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise  
12 entitled to under 47 U.S.C. § 227(b)(3)(C).

13  
14 WHEREFORE, Plaintiff, BEVERLY J. BAKER, respectfully requests that this Honorable  
15 Court enter judgment in her favor as follows:

- 16 a. Declaring that the practices complained of herein are unlawful and violate the  
17 aforementioned statutes and regulations;
- 18 b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages pursuant  
19 to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- 20 c. Awarding Plaintiff costs and reasonable attorney fees;
- 21 d. Enjoining Defendant from further contacting Plaintiff; and
- 22 e. Awarding any other relief as this Honorable Court deems just and appropriate.

23 **COUNT II – VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

24  
25 32. Plaintiff restates and realleges paragraphs 1 through 31 as though fully set forth herein.

26 33. Plaintiff is a "person" as defined by Cal. Civ. Code § 1788.2(g).  
27  
28

1 34. The subject debt is a “debt” and “consumer debt” as defined by Cal. Civ. Code § 1788.2(d)  
2 and (f).

3 35. Defendant is a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).

4 **a. Violations of RFDCPA § 1788.17**

5 36. The RFDCPA, pursuant to Cal. Civ. Code § 1788.17 states that “Notwithstanding any other  
6 provision of this title, every debt collector collecting or attempting to collect a consumer debt shall  
7 comply with the provisions of Section 1692b to 1692j [of the Fair Debt Collection Practices Act  
8 (“FDCPA”)], inclusive of, and shall be subject to the remedies in Section 1692k of, Title 15 of the  
9 United States Code.”  
10

11 **i. Violations of the FDCPA §1692c and §1692d**

12 37. The FDCPA, pursuant to 15 U.S.C. §1692c(a)(2), prohibits a debt collector from  
13 “communicat[ing] with a consumer in connection with the collection of a debt if the debt collector  
14 knows the consumer is represented by an attorney...”  
15

16 38. Defendant violated c(a)(2) when it placed over 30 calls to Plaintiff’s cellular phone after it  
17 knew that Plaintiff was represented by an attorney.

18 39. The FDCPA, pursuant to 15 U.S.C. §1692d, prohibits a debt collector from engaging “in  
19 any conduct the natural consequence of which is to harass, oppress, or abuse any person in  
20 connection with the collection of a debt.” §1692d(5) further prohibits, “causing a telephone to ring  
21 or engaging any person in telephone conversation repeatedly or continuously with intent to annoy,  
22 abuse, or harass any person at the called number.”  
23

24 40. Defendant violated §1692c(a)(1), d and d(5) when it repeatedly called Plaintiff after being  
25 notified to stop. This behavior of systematically calling Plaintiff’s phone on a systematic basis in  
26 spite of her demands was harassing and abusive. The frequency and nature of calls shows that  
27 Defendant willfully ignored Plaintiff’s pleas with the goal of annoying and harassing her.  
28

1 41. Defendant was notified by Plaintiff that its calls were not welcomed, especially since  
2 Plaintiff was filing for bankruptcy. As such, Defendant knew that its conduct was inconvenient  
3 and harassing to Plaintiff.

4 **ii. Violations of the FDCPA § 1692e**

5 42. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using “any false,  
6 deceptive, or misleading representation or means in connection with the collection of any debt.”  
7

8 43. In addition, this section enumerates specific violations, such as:

9 “The use of any false representation or deceptive means to collect or attempt to  
10 collect any debt or to obtain information concerning a consumer.” 15 U.S.C.  
§1692e(10).

11 44. Furthermore, Defendant violated §1692e and e(10) when it used deceptive means to collect  
12 and/or attempt to collect the subject debt. In spite of the fact that Plaintiff demanded that it stop  
13 contacting her, Defendant continued to contact her. Instead of putting an end to this harassing  
14 behavior, Defendant placed repeated calls to Plaintiff’s cellular phone in a deceptive attempt to  
15 force her to answer its calls and ultimately make a payment. Through its conduct, Defendant  
16 misleadingly represented to Plaintiff that it had the legal ability to contact her after she explained  
17 that she could not pay.  
18

19 **iii. Violations of FDCPA § 1692f**

20 45. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using “unfair or  
21 unconscionable means to collect or attempt to collect any debt.”  
22

23 46. Defendant violated §1692f when it unfairly and unconscionably attempted to collect on a  
24 debt by repeatedly calling Plaintiff after being notified to stop. Attempting to coerce Plaintiff into  
25 payment by placing voluminous phone calls without her permission is unfair and unconscionable  
26 behavior. These means employed by Defendant only served to worry and confuse Plaintiff.  
27  
28

1 47. Defendant willfully and knowingly violated the RFDCPA. Defendant was aware that  
2 Plaintiff was represented by an attorney regarding the subject debt, but yet continued to bombard  
3 Plaintiff with collection notices, demanding payment for the subject debt. Moreover, Defendant  
4 continued to call Plaintiff's cellular phone after she specifically asked it to stop contacting her.  
5 Defendant's willful and knowing violations of the RFDCPA should trigger this Honorable Court's  
6 ability to award Plaintiff statutory damages of up to \$1,000.00, as provided under Cal. Civ. Code §  
7 1788.30(b).  
8

9 48. As plead in paragraphs 22 through 25, Plaintiff has been harmed and suffered damages as  
10 a result of Defendant's illegal actions.

11 WHEREFORE, Plaintiff, BEVERLY J. BAKER, respectfully requests that this Honorable  
12 Court enter judgment in her favor as follows:  
13

- 14 a. Declare that the practices complained of herein are unlawful and violate the aforementioned  
statute;
- 15 b. Award Plaintiff actual damages, pursuant to Cal. Civ. Code § 1788.30(a);
- 16 c. Award Plaintiff statutory damages up to \$1,000.00, pursuant to Cal. Civ. Code §  
17 1788.30(b);
- 18 d. Award Plaintiff costs and reasonable attorney fees as provided pursuant to Cal. Civ. Code  
19 § 1788.30(c); and
- 20 e. Award any other relief as the Honorable Court deems just and proper.  
21

22 Dated: December 31, 2018

Respectfully submitted,

23 By: /s/ Nicholas M. Wajda

24 Nicholas M. Wajda

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